HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL NO : 2472 of 2005

Between:

Sri Venkata Madhavi Rice and Flour Mill,

Singarayakonda,

Contractor T.Punnaiah,

Paddy Rice and General Merchant,

Singarayakonda Village and Mandal
Prakasam District.

..... APPELLANT

AND

The District Collector Prakasam District, Ongole and others

.....RESPONDENT(S)

::JUDGMENT::

Counsel for the Appellant : MR.I.GOPALA REDDY

Counsel for the Respondents : GP FOR CIVIL SUPPLIES

Dated 02.01.2006

Per G.S.Singhvi, CJ

Dissatisfied with the extreme compassion shown by the learned Single Judge, who ordered release of the seized stocks of rice on the appellant's furnishing bank guarantee to the extent of its half value, the appellant has filed this appeal and

prayed for setting aside order dated 15.11.2005 passed by the learned Single Judge in W.P.No.24327 of 2005 and for issuance of a direction to the respondents to unconditionally release the seized stocks.

A perusal of the record including affidavit dated 24.12.2005 filed by Sri S. Sabhapathi Rao, Mandal Revenue Officer, Singarayakonda, Prakasam District in compliance of the direction given by the Court on 16.12.2005 and reply affidavit dated 28.12.2005 filed by the appellant shows that Revenue Divisional Officer, Kandukuru, Prakasam District and Mandal Revenue Officer, Singaryakonda, Prakasam District inspected the rice mill of the appellant on 2.10.2005. Thereafter, proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') were initiated against the appellant on the charge of violating the provisions contained in A.P. Rice Procurement (Levy) Order, 1984 (for short 'the Levy Order'). Application made by the appellant for release of the stocks was rejected by Collector, Ongole, Prakasam, vide his order dated 9.11.2005. The officer concerned also directed that the seized stocks be sold by public auction.

The appellant challenged the aforementioned order primarily on the ground that in view of the provisions contained in the Removal of (Licensing Requirements, Stock Limits and Movement Restrictions) on Specified Food Stuffs Order, 2002 (for short 'the Food Stuffs Order, 2002') issued by the Government of India, the provisions contained in A.P. Scheduled Commodities (Licensing and Distribution) Order 1982 will be deemed to have been repealed in so far as the same relates to rice and in the absence of any restriction on the storage and movement of rice, the respondents did not have the jurisdiction to seize the stocks of rice and order sale thereof.

The learned Single Judge took into consideration the fact that the proceedings initiated against the writ petitioner (appellant herein) under Section 6-A of the Act are pending and disposed of the writ petition by directing the Collector to release the seized stocks in favour of the appellant on his furnishing bank guarantee to the extent of half of the value of the seized stocks.

Sri I. Gopal Reddy, learned counsel for the appellant vehemently argued that in view of the Food Stuffs Order, 2002 issued by the Government of India, there is no restriction on the storage and movement of rice and, therefore, respondents 2 and 3

did not have the jurisdiction to seized the stocks of rice on the ground of alleged violation of the provisions of the Levy Order and the learned Single Judge committed an error by imposing an onerous condition for release of the stocks. He further argued that the Levy Order will be deemed to have been repealed by the Food Stuffs Order, 2002 and, therefore, the appellant cannot be penalized on the allegation that it had not supplied levy rice.

Learned Government Pleader for Civil Supplies invited our attention to the averments contained in the affidavit of
Sri S.Sabhapathi Rao and the amendment made in the Food Stuffs Order, 2002 vide Government of India Notification No. GSR 490 (E) dated 12.6.2003, issued by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) to show that the provisions of the Levy Order are not affected by the Food Stuffs Order, 2002 and argued that the blatant violation of the Levy Order by the appellant justified seizure of the stocks found in the mill. According to the learned Government Pleader, the appellant is guilty of violating the mandatory provisions contained in the Levy Order in terms of which he was required to give levy rice to the State Government for distribution through Public Distribution System.

We have considered the respective submissions and perused the record. We have also gone through the provisions contained in Food Stuffs Order 2002 and the notification dated 16.6.2003.

At this stage, we do not consider it proper to express any conclusive opinion on the issue whether the appellant has violated the provisions of the Levy Order, but we have no hesitation to reject the contention of the learned counsel that after coming into force of the Food Stuffs Order 2002, his client was not required to give levy rice to the State Government. By virtue of the Food Stuffs Order 2002, the provisions of A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982 will be deemed to have been repealed in respect of some products including the rice, but that Order does not have the effect of repealing the Levy Order. This position was made explicit by notification dated 16.6.2003 in paragraph 4, which is reproduced below.

> "4. In the said Order, after clause 6 of the following clause shall be added, namely:-
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> 7. Nothing contained in this order shall affect the operation of the levy orders issued by the State Governments for the purpose of procurement of rice as levy from the millers or dealers of paddy or rice in pursuance of the powers delegated to the State Governments by the Central Government under Section 3 of the Essential Commodities Act, 1955."

The appellant has not challenged the constitutionality or vires of notification dated 16.6.2003. Therefore, it is not open to him to contend that the provisions of the Levy Order cannot be enforced. In our view, the Levy Order is very much in force and the appellant was duty bound to make its contribution of levy rice, which was admittedly not done. In the premise aforesaid, we do not find any valid ground to interfere with what we have described as an extremely compassionate order passed by the learned Single Judge.

In the result, the appeal is dismissed. We would have saddled the appellant with costs but refrain from doing so because the proceedings under Section 6-A of the Act are pending against the appellant before the competent authority and any order passed by this Court for levy of costs will necessarily prejudice its cause.

G.S.SINGHVI, CJ

Dt.02.01.2006

R.SUBHASH REDDY,J

Msv/vtv